

AUG 25 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

BERNARDO SOLANO DIAZ,

Defendant-Appellant.

No. 05-30378

D.C. No. CR-04-00178-GMK

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Oregon
Garr M. King, District Judge, Presiding

Submitted August 21, 2006 ^{**}

Before: GOODWIN, REINHARDT, and BEA, Circuit Judges.

Bernardo Solano Diaz appeals his conviction by conditional plea and
5-month sentence for being a felon in possession of a firearm, in violation of

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

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18 U.S.C. § 922(g)(1). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we reverse and remand.

Solano Diaz contends, and the government concedes, that *Georgia v. Randolph*, 126 S. Ct. 1515 (2006), compels the reversal of the district court's denial of his motion to suppress. We agree. Because Solano Diaz was present at the scene and expressly declined to consent to the search of his apartment, the police unreasonably relied upon the consent given by his brother.

In light of our agreement with the government's concession, Solano Diaz's remaining contention regarding the effectiveness of his brother's consent is moot.

REVERSED and REMANDED.